

STATE OF VERMONT
HUMAN SERVICES BOARD

In re)	Fair Hearing No. 10,488
)	
Appeal of)	
)	

INTRODUCTION

The petitioner appeals the decision by the Department of Social Welfare terminating her Medicaid benefits. The issue is whether the petitioner or her husband meet the definition of an "unemployed parent"--more particularly, whether either of them is "employed" more than 100 hours per month as a "foster parent" of disabled adults.

FINDINGS OF FACT

The petitioner lives with her husband, their minor child, and two non-related disabled adults for whom the petitioner and her husband provide foster care. (The petitioner's husband also maintains a part-time carpeting business. The Department does not contend that this business entails more than 100 hours of "employment" per month.)

The petitioner and her husband provide the foster care pursuant to a "Contract for Services" with a local community mental health service. According to the terms of the contract the petitioners are responsible, inter alia, for providing "residential care for the residents, including but not limited to room and board, emergency backup for day programs, sick days, holidays, and client vacations". Although the

petitioners are also required to attend meetings and training programs, there is no provision in the contract relating to hours required to be spent with the residents or the type and amount of direct care and supervision of them. For the petitioners' services the agency pays them \$397.90 per client, per month. Under the contract, this money is described as "payment" . . . "in consideration for . . . services . . ."

Though it is not stipulated in the contract, the particular adults in the petitioner's care are severely disabled and, in fact, need frequent care and supervision. The petitioners point out, however, that they are not required to be present in the home with the residents on a 24-hours-a-day basis. The contract specifically provides for the possibility that both parents may be "working" outside the home.

It appears, however, that the amount of the "payment" the petitioners receive for their services is at least partly dependent on the difficulty anticipated by the agency in caring for the particular adults in question. The petitioners' submitted a breakdown of their "expenses" incurred pursuant to providing this care. They would not divulge, however, how much "additional" payment they receive as a result of the "difficulty" of the residents in question. They point out, however, (uncontroverted by the Department) that none of these payments is subject to state or federal income tax. It also appears that the Department

does not consider these payments "income" for food stamp and Medicaid purposes. (See infra.)

ORDER

The Department's decision is reversed.

REASONS

To be "categorically" eligible for Medicaid the petitioner must establish a "relationship" to the ANFC program--i.e., a child in her household must be "deprived of parental support" by virtue of parental "absence", "incapacity", or "unemployment". See Medicaid Manual §§ M 300 and M 323, and W.A.M. §§ 2330-2339. The petitioner in this case claims eligibility based on "unemployment".

W.A.M. § 2333.1 includes in the definition of an "unemployed parent":

" . . . 3. If employed, was employed fewer than 100 hours in the previous 30 days . . . Full time employment (i.e., 100 hours or more per month), although earnings may be insufficient to meet family need, is not considered 'unemployment'. Income from fewer than four boarders is not considered 'employment'. (Emphasis added.)

It is concluded that under the above regulations the type of "foster care" provided by the petitioners in this matter does not constitute "employment". Under the terms of the petitioners' contract with the mental health agency the petitioners are required to furnish little more than "room and board" to the residents in their care. Despite evidence that the residents in the petitioners' care do, in fact, require additional care, the petitioners clearly are not

"employees" of the mental health agency for this purpose. Although it appears the amount of the payments received by the petitioners is partly related the "degree of difficulty" in caring for these particular residents, there is no evidence that the amount of the payments is contingent upon the time the petitioners spend caring for them. The payments are not taxable, and it appears that the Department does not consider them "income" under the food stamp and Medicaid (ANFC) regulations. See Food Stamp Manual § 273.9(c)(5)(i)(C) and W.A.M. §§ 2255.1(5) and (19).

The Department admits that it would not have reached the same result had the residents in the petitioner's household been foster children. The Department did point out that, unlike adults, foster children, by regulation, are themselves eligible for ANFC (see W.A.M. § 2248). In the Board's view, however, this, in and of itself, does not distinguish the treatment of foster children from foster adults in determining whether the foster parents are "employed" under W.A.M. § 2333.1(3).

The Department also admits the difficulty of basing eligibility determinations under § 2333.1(3) on the "degree of difficulty" in providing adult foster care to particular residents. The Department does not maintain that the same result would have achieved in this case if the residents in question needed no or only minimal "care" from the petitioners beyond the provision of basic room and board.

The Department appears to argue that eligibility is determined based on the representations of the foster parents themselves regarding the level of care they, in fact, provide. However, "objective" analysis appears absent. If anecdotal evidence of actual "time" spent in the provision of "care" is the basis of the decision, should diligent foster parents (considering that "time" is not stipulated in their contracts) be at a disadvantage compared to ones who commit less of their actual time to the care of their residents? Or should families who consent to take in difficult-to-care-for adults be judged under a harsher standard than families who provide care for less-impaired disabled adults?²

Based on the uncontroverted evidence regarding the petitioners' contractual obligations to the mental health agency, the appearance that the Department does not consider the payments in question to be "income" under any program--including Medicaid, and the absence of a specific regulation or policy concerning the provision of foster care to adults, it must be concluded that neither of the petitioners is "employed" pursuant to W.A.M. § 2333.1(3). The Department's decision should, therefore, be reversed.³

FOOTNOTES

¹See Medicaid Manual § M 336.

²The Department's decision appears to be partly based on the fact that the petitioners have claimed, and have been granted, an exemption under food stamps from the requirement

that they register with D.E.T. and participate in a job-search program based on the finding that they are "employed" as foster parents. See F.S.M. § 273.7(b)(1)(vii). While this appears to be inconsistent with the result reached herein, one or both of the petitioners may nonetheless be exempt from the food stamp work-search provisions by virtue of their "care"--regardless of whether it is rendered as "employment"--of an "incapacitated person". See Id. § 273.7(b)(1)(iv).

³This assumes that the petitioners otherwise meet the definition of "unemployed parent". It can be noted that registering for and participating in Reach-up is also part of the ANFC definition of unemployed parent (see W.A.M. § 2333.1(7))--although, like under food stamps (see footnote 3, supra), a person who provides "care" to a "household member" who requires it can be exempt from this requirement. See W.A.M. § 2342.1(7).

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